

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

APPLETON PAPERS INC. and
NCR CORPORATION,

Plaintiffs,

v.

DEFENDANT LEICHT TRANSFER &
STORAGE COMPANY'S MOTION TO
DISMISS

GEORGE A. WHITING PAPER COMPANY,
P.H. GLATFELTER COMPANY,
MENASHA CORPORATION,
GREEN BAY PACKAGING, INC.,
INTERNATIONAL PAPER COMPANY,
LEICHT TRANSFER & STORAGE COMPANY,
NEENAH FOUNDRY COMPANY,
NEWPAGE WISCONSIN SYSTEM INC.,
THE PROCTER & GAMBLE PAPER PRODUCTS
COMPANY, and WISCONSIN PUBLIC SERVICE
CORP.,

Case No. 08-CV-00016-WCG

Defendants.

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and (6), Defendant Leicht Transfer & Storage Company ("Leicht"), by its attorneys, Ruder, Ware, L.L.S.C., respectfully moves this Court to dismiss Counts I and III of plaintiffs' Third Amended Complaint.

Plaintiffs' Count I should be dismissed because the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") does not permit the plaintiffs to assert claims under both Section 107 and Section 113 (42 U.S.C. §§ 9607 and 9613, respectively). If the plaintiffs are entitled to relief in this case, their relief is limited to contribution under Section 113 of CERCLA because, according to their own allegations and matters of public record

referred to in the Third Amended Complaint, demonstrate they incurred costs voluntarily only after state and federal agencies stepped in to address pollution in the Lower Fox River. The Court should therefore dismiss their Section 107 claim. In addition, the plaintiffs lack standing to seek natural resource damages under Section 107(a)(4)(C) because only governmental agencies may recover those damages.

The Court should also dismiss the plaintiff's Count III for two reasons: the express language does not authorize declaratory judgments under Section 113, and this Court cannot fully and accurately allocate those shares for the entire future cleanup of the Fox River at this time.

This Motion to Dismiss is accompanied by Defendant Leicht's Memorandum in Support of Motion to Dismiss, which has been filed and served concurrently with this Motion in accordance with the Local Rules.

Dated this 29th day of April, 2008.

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Company

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 29, 2008, a copy of Leicht Transfer & Storage Company's Motion to Dismiss and Leicht Transfer & Storage Company's Memorandum in Support of Motion to Dismiss were filed electronically. Notice of this filing will be sent to counsel listed below by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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The undersigned hereby certifies that on April 29, 2008, a copy of the foregoing Leicht Transfer & Storage Company's Motion to Dismiss and Leicht Transfer & Storage Company's Memorandum in Support of Motion to Dismiss were filed electronically and have been sent via first-class U.S. Mail, postage prepaid and properly addressed to the following parties:

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